

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:

**BWAY Corporation,
Chicago, Illinois.**

EPA-5-13-113(a)-IL-05

**Proceeding Under Sections 113(a)
and 114(a) of the Clean Air Act,
42 U.S.C. §§ 7413(a) and 7414(a)**

Administrative Consent Order

1. The Director of the Air and Radiation Division, U.S. Environmental Protection Agency, Region 5 (EPA), and BWAY Corporation (BWAY) agree to the terms of this Consent Order under Sections 113(a)(1), 113(a)(3), and 114(a)(1) of the Clean Air Act (Act), 42 U.S.C. §§ 7413(a)(1) and (a)(3) and 7414(a)(1), to resolve alleged violations of the Act at the facility located at 3200 South Kilbourn Avenue, Chicago, Illinois 60623 (the Facility).

Applicable Statutory and Regulatory Background

The National Emission Standards for Hazardous Air Pollutants

2. Section 112 of the Act, 42 U.S.C. § 7412(c), requires EPA to promulgate a list of all categories and subcategories of new and existing “major sources” of hazardous air pollutants (HAP), as defined by 42 U.S.C. § 7412(a)(1), and establish emission standards for the categories and subcategories. These emission standards are known as the National Emission Standards for Hazardous Air Pollutants (NESHAP).

3. Under Section 112 of the Act, 42 U.S.C. § 7412, EPA promulgated the NESHAP for Surface Coating of Metal Cans at 40 C.F.R. §§ 63.3480 through 63.3561 (Can Coating NESHAP). The Can Coating NESHAP applies to owners or operators of existing sources that

use 5,700 liters (1,500 gallons) per year or more of coatings to coat metal cans, and that are major sources of HAP emissions.

4. The Can Coating NESHAP requires the owner or operator of an affected source to, *inter alia*: (1) meet the emission limit for the subcategory or subcategories of coating activities present at the source by utilizing one of four compliance options (40 C.F.R. §§ 63.3490 through 63.3491); (2) meet the operating limits for any capture and control devices utilized for compliance and to monitor such operating limits using a continuous parameter monitoring system (CPMS) (40 C.F.R. § 63.3492); and (3) submit reports and notifications and maintain certain records (40 C.F.R. §§ 63.3510 through 63.3513).

5. Under Section 112 of the Act, 42 U.S.C. § 7412, EPA promulgated the NESHAP for Surface Coating of Miscellaneous Metal Parts and Products at 40 C.F.R. §§ 63.3880 through 63.3981 (Metal Parts Coating NESHAP). The Metal Parts Coating NESHAP applies to owners or operators of existing sources that use 946 liters (250 gallons) per year or more of coatings that contain HAP in the surface coating of miscellaneous metal parts and products, and that are major sources of HAP emissions.

6. The Metal Parts Coating NESHAP requires the owner or operator of an affected source to, *inter alia*: (1) meet the emission limit for the subcategory or subcategories of coating activities present at the source by utilizing one of three compliance options (40 C.F.R. § 63.3890); (2) meet the operating limits for any capture and control devices utilized for compliance and to monitor such limits using a CPMS (40 C.F.R. § 63.3892); (3) and submit reports and notifications and maintain records of compliance (40 C.F.R. §§ 63.3910 through 63.3931).

The Illinois State Implementation Plan

7. Under Section 110 of the Act, 42 U.S.C. § 7410, each state must submit to the Administrator of EPA a plan for attaining and maintaining the National Ambient Air Quality Standards. Upon approval by EPA, the plan becomes part of the applicable State Implementation Plan (SIP) for the state.

8. On February 13, 1996, EPA approved the Illinois rules for controlling emissions of volatile organic materials, otherwise known as volatile organic compounds (VOC), from can and miscellaneous metal parts and products operations in the Chicago area, set forth in 35 Ill. Admin. Code 218.204, 218.205, and 218.207, as part of the federally enforceable SIP for the State of Illinois. 61 Fed. Reg. 5511.

9. On March 18, 1999, EPA approved a site-specific revision to the Illinois SIP revising the VOC Reasonably Available Control Technology requirements for the Facility, allowing the Facility to apply can coating SIP requirements in 35 Ill. Admin. Code part 218 to its pail coating operations, provided that: (1) no more than 20 percent of the total number of cans and pails coated on an annual basis are pails; (2) the pails are geometrically identical to cans coated at the facility, in terms of shape and volume; and (3) the pails are produced from metal with a thickness of no more 20 gauge (0.039 inches). 64 Fed. Reg. 13346.

10. 35 Ill. Admin. Code 218.204 provides that no owner or operator of a coating line shall apply at any time any coating in which the VOC content exceeds the emission limitations listed therein, including the emission limitations for can coating listed in 35 Ill. Admin. Code 218.204(b), except as provided in 35 Ill. Admin. Code 218.205 and 218.207.

11. 35 Ill. Admin. Code 218.205(c) provides that no owner or operator of a can coating line that is subject to the emission limitations in 35 Ill. Admin. Code 218.204(b) shall

operate the can coating line using a coating with a VOC content in excess of the limitations in 35 Ill. Admin. Code 218.204(b) unless the actual daily emissions never exceed the alternative daily emission limitation calculated in accordance with 35 Ill. Admin. Code 218.205(c)(1) and (2).

12. 35 Ill. Admin. Code 218.207(h) provides that no owner or operator of a can coating line which is equipped with a capture system and control device shall operate the subject coating line unless the requirements of 35 Ill. Admin. Code 218.207(h)(1) and (2) are met.

13. 35 Ill. Admin Code 218.207(h)(1) provides that an alternative daily emission limitation shall be determined for the can coating operation, i.e., for all of the can coating lines at the source, according to 35 Ill. Admin. Code 218.205(c). Actual daily emissions shall never exceed the alternative daily emission limitation calculated under 35 Ill. Admin. Code 218.207(h)(1).

14. 35 Ill. Admin. Code 218.207(h)(2) requires a coating line to be equipped with a capture system and control device that provides 75 percent reduction in overall emissions of VOC from the coating line and a control device that has a 90 percent efficiency.

Title V Requirements and the Title V Permit

15. Title V of the Act, 42, U.S.C. §§ 7661-7661f, established an operating permit program for major sources of air pollution. Section 502(d) of the Act, 42 U.S.C. § 7661a(d), provides that each state must submit to EPA a permit program meeting the requirements of Title V.

16. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b) provide that, after the effective date of any permit program approved or promulgated under Title V of the Act, no source subject to Title V may operate except in compliance with Title V permit. Title V

permits are federally enforceable and all terms and conditions in a Title V Permit are enforceable by EPA. 40 C.F.R. § 70.7(b)(1).

17. EPA approved the Illinois Title V program on December 4, 2001. 66 Fed. Reg. 62946. The approved Illinois Title V program is known as the Illinois Clean Air Act Permit Program (CAAPP).

18. The Illinois Environmental Protection Agency (IEPA) issued a CAAPP Permit, Application No.: 95100031 to the Facility (listed as Central Can Company, Inc.) on August 29, 2005 (Title V Permit).

19. On August 26, 2009, Central Can requested that the Title V Permit be amended to list BWAY as the owner of the Facility.

20. On or about September 23, 2009, an application to renew the Title V Permit was submitted.

21. Pursuant to Condition 9.14 of the Title V permit, the terms and conditions of the Title V Permit remain in effect until the issuance of a renewal permit.

22. The significant emission unit in the Title V Permit that is relevant to this Consent Order is:

Emission Unit	Description	Commenced Construction	Emission Control Equipment
05	Litho Department, Coaters with Ovens	1948	Catalytic Oxidizer (Line Nos. 2, 3, and 4) and Thermal Oxidizer (Line No. 1)

23. Condition 7.1.3.d. of the Title V Permit states that the source shall comply with one of three compliance options for VOC emissions when can coating is performed. The options relevant here include: a facility-wide alternative daily emission limitation (Condition 7.1.3.d.i.); or the use of a capture system and control device that provides a minimum 75 percent reduction

in overall emissions of VOC and a control device with a 90 percent efficiency (Condition 7.1.3.d.iii.).

24. Condition 7.1.5.b. of the Title V Permit states that the thermal oxidizer combustion chamber shall be preheated and maintained at 1320°F during operation of the affected coating lines. This condition also states that the catalytic oxidizer chamber shall be preheated and maintained at 650°F during operation of the affected coating lines.

25. Condition 7.1.5.d. of the Title V Permit states that the operation of any natural gas fired afterburner and capture system used to comply with 35 Illinois Admin. Code Part 218 is not required during the period of November 1 of any year to April 1 of the following year provided the operation of such devices is not required for the purposes of occupational safety or health or for the control of toxic substances, odor nuisances, or other regulated pollutants.

26. Condition 7.1.8.a. of the Title V Permit states that each afterburner shall be equipped with a continuous temperature indicator and strip chart recorded or disk storage to monitor the afterburner combustion chamber temperature.

27. Condition 7.1.8.b. and Attachment 3, Tables 3 and 4 of the Title V Permit state that continuous monitoring is required during operation of the thermal oxidizer and catalytic oxidizer.

28. Condition 9.2.1. of the Title V Permit states that BWAY must comply with all terms and conditions of the permit and that any noncompliance constitutes a violation of the Act.

29. Condition 9.2.2. of the Title V Permit states that BWAY shall maintain all equipment covered under the permit in such a manner that the performance or operation of such equipment shall not cause a violation of the applicable requirements.

30. Under Section 113(a)(1) and (3) of the Act, 42 U.S.C. §§ 7413 (a)(1) and (3), the Administrator of EPA may issue an order requiring compliance to any person who has violated or is violating the NESHAP regulations, a SIP, or permit. The Administrator has delegated this authority to the Director of the Air and Radiation Division.

31. The Administrator of EPA may require any person who owns or operates an emission source to make reports and provide information required by the Administrator under Section 114(a)(1) of the Act, 42 U.S.C. § 7414(a)(1). The Administrator has delegated this authority to the Director of the Air and Radiation Division.

Findings and Alleged Violations

32. BWAY owns and operates the Facility and has owned and operated the Facility at all times relevant to this Consent Order.

33. BWAY operates four coating lines at the Facility (Line Nos. 1-4) that are used for surface coating of metal cans and pails.

34. BWAY owns or operates an “emission source” within the meaning of Section 114(a)(1) of the Act, 42 U.S.C. § 7414(a)(1). Therefore, BWAY is subject to the requirements of Section 114(a)(1).

35. BWAY’s Facility emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAPs, and therefore, is a “major source” as defined in 42 U.S.C. § 7412(a)(1).

36. BWAY is subject to the Can Coating NESHAP, the Metal Parts Coating NESHAP, and the Illinois SIP requirements for can coating in the Chicago area at 35 Ill. Admin. Code 218.204, 218.205, and 218.207.

37. At all times relevant to this Consent Order, when it utilized the compliance options at 40 C.F.R. § 63.3491(c), 40 C.F.R. § 63.3891(c), and Condition 7.1.3.d.iii. of the Title V Permit, BWAY used a thermal oxidizer to control VOC and HAP emissions from Line No. 1 at the Facility and a catalytic oxidizer to control VOC and HAP emissions from Line Nos. 2-4 at the Facility.

38. On August 31, 2012, BWAY submitted an expedited application to IEPA to amend its Title V Permit to replace the catalytic oxidizer that controlled emissions of VOC and HAP from Line Nos. 2-4 with a regenerative thermal oxidizer.

39. On September 4, 2012, EPA issued BWAY a Notice and Finding of Violation alleging that BWAY violated various provisions of the Can Coating NESHAP, the Metal Parts Coating NESHAP, the Illinois SIP requirements for can coating in the Chicago area at 35 Ill. Admin. Code 218.204, 218.205, and 218.207, and the Title V Permit.

40. On September 24, 2012, IEPA issued BWAY a construction permit, authorizing BWAY to install a regenerative thermal oxidizer to control emissions of VOC and HAP from Line Nos. 2-4 at the Facility (Construction Permit).

41. On October 23, 2012, representatives of BWAY and EPA discussed the September 4, 2012 Notice and Finding of Violation.

42. For purposes of establishing the operating limits under 40 C.F.R. § 63.3492(b) and 40 C.F.R. § 63.3892(b), BWAY conducted a performance test on the thermal oxidizer and catalytic oxidizer on November 2, 2006 (2006 performance test).

43. The 2006 performance test established: (1) the minimum temperature at the thermal oxidizer (1386°F); (2) the minimum temperature (649°F) and the minimum temperature

difference across the catalyst bed (23°F) at the catalytic oxidizer; and (3) an average of 80.4% for the destruction efficiency of the catalytic oxidizer.

44. During the following time periods, BWAY utilized the emission rate with add-on controls compliance option in the Can Coating NESHAP, 40 C.F.R. § 63.3491(c), on Line Nos.

1-4:

May 1 to Sept. 30, 2007

May 1 to Sept. 30, 2008

May 1 to Sept. 30, 2009

Oct. 1 to Dec. 31, 2009

Jan. 1 to Feb. 28, 2010

May 1, 2010 to March 31, 2012

45. During the following time periods, BWAY utilized the emission rate with add-on controls compliance option in the Metal Parts Coating NESHAP, 40 C.F.R. § 63.3891(c), on

Line Nos. 1-4:

May 1 to Sept. 30, 2007

May 1 to Sept. 30, 2008

May 1 to Sept. 30, 2009

Jan. 1 to Feb. 28, 2010

May 1, 2010 to March 31, 2012

46. When BWAY was utilizing the emission rate with add-on controls compliance options in the Can Coating NESHAP, 40 C.F.R. § 63.3491(c), and the Metal Parts Coating NESHAP, 40 C.F.R. § 63.3891(c), during the time periods set forth in Paragraphs 44 and 45, BWAY consistently operated the thermal oxidizer below the minimum temperature established during the 2006 performance test.

47. When BWAY was utilizing the emission rate with add-on controls compliance options in the Can Coating NESHAP, 40 C.F.R. § 63.3491(c), and the Metal Parts Coating NESHAP, 40 C.F.R. § 63.3891(c), during the time periods set forth Paragraphs 44 and 45, BWAY consistently operated the catalytic oxidizer below the minimum inlet temperature, the temperature difference across the catalyst bed, or both, established during the 2006 performance test.

48. When BWAY was utilizing the emission rate with add-on controls compliance options in the Can Coating NESHAP, 40 C.F.R. § 63.3491(c), and the Metal Parts Coating NESHAP, 40 C.F.R. § 63.3891(c), during the time periods set forth Paragraphs 44 and 45, the CPMS was not in operation or did not collect emission capture system and add-on control device parameter data for 10 days in 2007, 8 days in 2008, 6 days in 2009, 178 days in 2010, 66 days in 2011, and 1 day in 2012, when at least one of the coating lines was in operation.

49. In the following Semi-Annual Compliance Reports, BWAY failed to report all of the deviations from the emission and operating limits as required by the Can Coating NESHAP, 40 C.F.R. § 63.3511(a)(7), and the Metal Parts Coating NESHAP, 40 C.F.R. § 63.3920(a)(7):

<u>Date of Semi-Annual Compliance Report</u>	<u>Compliance Period</u>
Jan. 31, 2008	Nov. 13, 2006 – Nov. 30, 2007
Jan. 31, 2008	Dec. 1 – Dec. 31, 2007
Jan. 26, 2009	Nov. 13, 2007 – Nov. 30, 2008
Jan. 26, 2009	July 1, 2008 – Dec. 31, 2008
July 29, 2009	Jan. 1, 2009 – June 30, 2009
Feb. 1, 2010	July 1, 2009 – Dec. 31, 2009

50. BWAY failed to perform corrective actions related to the operating parameter deviations set forth in Paragraphs 46 and 47 and the periods of CPMS downtime or inoperation set forth in Paragraph 48. In addition, when the CPMS was operating, BWAY failed to record temperature data in the correct unit of measure for purposes of ensuring compliance with applicable emission limits and other requirements in the Can Coating NESHAP and Metal Parts Coating NESHAP in 2011.

51. At various times from May 1, 2007 through February 9, 2012, BWAY failed to operate and maintain the Facility, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices as required by the Can Coating NESHAP and Metal Parts Coating NESHAP. *See* 40 C.F.R. §§ 63.6(e), 63.3500(b), 63.3900(b).

52. BWAY's failure to satisfy the requirements of the Can Coating NESHAP and Metal Parts Coating NESHAP as set forth in Paragraphs 46 through 51 constitute violations of Section 112 of the Act, 42 U.S.C. § 7412.

53. From May 1, 2007 through December 31, 2012, BWAY utilized the compliance options set forth in conditions 7.1.3.d.i. and 7.1.3.d.iii. of the Title V Permit simultaneously.

54. BWAY violated Title V of the Act, the Title V Permit, and the Illinois SIP, when its actual emissions of VOC exceeded the emission limitation set forth in condition 7.1.3.d.i. of the Title V Permit on the following days:

May 16, 2010
Sept. 16, 2010
Oct. 4, 2010
Oct. 9, 2010
Jan. 28, 2011
April 16, 2011

July 7, 2011
July 8, 2011
July 15, 2011
July 16, 2011
Oct. 21, 2011
Feb. 19, 2012

55. BWAY violated Title V of the Act, the Title V Permit, and the Illinois SIP, when it operated the thermal oxidizer and catalytic oxidizer below the minimum temperatures established in Condition 7.1.5.b. of the Title V Permit at various times from May 2007 to September 2011.

56. BWAY violated Title V of the Act, the Title V Permit, and the Illinois SIP, when it failed to operate the CPMS or the CPMS failed to record data for 10 days in 2007, 8 days in 2008, 6 days in 2009, 178 days in 2010, 66 days in 2011, and 1 day in 2012, when at least one of the coating lines was in operation

57. BWAY violated Title V of the Act, the Title V Permit, and the Illinois SIP, when it failed to maintain all equipment covered under the Title V Permit in such a manner that the performance or operation of such equipment would not cause a violation of the applicable requirements.

Compliance Program

58. By the effective date of this Consent Order, BWAY must achieve, demonstrate, and maintain compliance with the Can Coating NESHAP, the Metal Parts Coating NESHAP, the Illinois SIP requirements for can coating in the Chicago area at 35 Ill. Admin. Code 218.204, 218.205, and 218.207, and the Title V Permit.

59. Within 30 calendar days of the effective date of this Consent Order, BWAY must apply to the IEPA for a construction permit for the construction and operation of permanent total

enclosures (PTEs) at Line Nos. 1-4 for purposes of compliance with 40 C.F.R. § 63.3491(d).

BWAY must submit a copy of its construction permit application to EPA at the address listed in Paragraph 62 below, within seven (7) calendar days of submitting the application to IEPA.

60. Within thirty (30) calendar days of the issuance of a construction permit from IEPA for the construction of PTEs at Line Nos. 1-4, BWAY must apply to the IEPA to amend its Title V Permit to utilize the control efficiency/outlet concentration compliance option set forth at 40 C.F.R. § 63.3491(d) as the sole means of complying with the Can Coating NESHAP. BWAY must submit a copy of its Title V Permit amendment application to EPA at the address listed in Paragraph 62 below, within seven (7) calendar days of submitting the application to IEPA.

61. Upon submission of the application to amend its Title V Permit as required by Paragraph 60, BWAY will utilize the control efficiency/outlet concentration compliance option set forth in 40 C.F.R. § 63.3491(d) as the sole means of complying with the Can Coating NESHAP.

62. BWAY must send all reports required by this Order to:

Attention: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

General Provisions

63. This Consent Order does not affect BWAY's responsibility to comply with other federal, state and local laws.

64. This Consent Order does not restrict EPA's authority to enforce the Illinois SIP, Section 112 of the Act, 42 U.S.C. § 7412, or any other section of the Act.

65. Nothing in this Consent Order limits EPA's authority to seek appropriate relief, including penalties, under Section 113 of the Act, 42 U.S.C. § 7413, for BWAY's violations of

the Can Coating NESHAP, the Metal Parts Coating NESHAP, the Illinois SIP requirements for can coating in the Chicago area at 35 Ill. Admin. Code 218.204, 218.205, and 218.207, and the Title V Permit.

66. Failure to comply with this Consent Order may subject BWAY to penalties of up to \$37,500 per day for each violation under Section 113 of the Act, 42 U.S.C. § 7413, and 40 C.F.R. Part 19.

67. The terms of this Consent Order are binding on BWAY, its assignees and successors. BWAY must give notice of this Order to any successors in interest prior to transferring ownership and must simultaneously verify to EPA, at the above address, that it has given the notice.

68. BWAY may assert a claim of business confidentiality under 40 C.F.R. Part 2, Subpart B, for any portion of the information it submits to EPA. Information subject to a business confidentiality claim is available to the public only to the extent allowed by 40 C.F.R. Part 2, Subpart B. If BWAY fails to assert a business confidentiality claim, EPA may make all submitted information available, without further notice, to any member of the public who requests it. Emission data provided under Section 114 of the Act, 42 U.S.C. § 7414, is not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. "Emission data" is defined at 40 C.F.R. § 2.301.

69. This order is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*, because it seeks to collect of information by an agency from specific individuals or entities as part of an administrative action or investigation. To aid in our electronic recordkeeping efforts, please furnish an electronic copy on CD or thumb drive. If not possible, provide your

response to this Consent Order without staples; paper clips and binder clips, however, are acceptable.


70. EPA may use any information submitted under this Consent Order in an administrative, civil judicial or criminal action.

71. BWAY stipulates that EPA has jurisdiction to issue this Consent Order. In addition, BWAY waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that it may have with respect to any issue of fact or law set forth in this Consent Order, including any right of judicial review under 42 U.S.C. § 7607(b)(1).

72. BWAY agrees to the terms of this Consent Order, and neither admits nor denies the factual allegations in this Consent Order.

73. This Consent Order is effective on the date of signature by the Director of the Air and Radiation Division. This Consent Order will terminate one year from the effective date, provided that BWAY has complied with all terms of the Consent Order throughout its duration.

9/9/13
Date


Kevin W. McNair
Executive Vice President Operations
BWAY Corporation

9/13/13
Date


George T. Czerniak
Director
Air and Radiation Division